

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN H. HUDSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 03-375; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the claimant sustained a recurrence of total disability for work over the period September 24 to December 3, 2001 causally related to his accepted work injury.

On March 20, 2000 appellant, then a 49-year-old mailhandler, filed an occupational disease claim alleging that he suffers from a back condition caused by heavy lifting and pushing in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for lumbosacral sprain, thoracic strain and myofascial pain syndrome. Appellant received compensation for intermittent periods of wage loss from March 20, 2000 to May 29, 2001, when he returned to limited duty.

Appellant has been under the care of Dr. John P. Zisko, a Board-certified family practitioner, for treatment of his work-related back condition. He underwent chiropractic manipulation and a course of physical therapy at Dr. Zisko's direction. In a March 12, 2001 report, Dr. Zisko noted that appellant primarily suffered from chronic myofascial pain syndrome, which he attributed to appellant's March 11, 2000 work injury, since appellant had reported no significant prior back pain before that time. He indicated that appellant should remain on light duty and continue with pain management therapy.

The record indicates that the employing establishment offered appellant a limited-duty job effective May 29, 2001, which he accepted. The duties and physical requirements of the modified mailhandler position were listed as prepping, lifting and placing flats that weigh between six ounces and two pounds into flat carts. Standing or sitting was permitted as needed. The physical requirements were further listed as no more than 4 hours standing per day, 2 hours of prolong sitting or standing, no lifting greater than 15 pounds, frequent reaching at arm level, reaching at knee level and squatting and lifting.

On September 24, 2001 appellant filed a claim for a recurrence of disability.

The Office subsequently received claims for wage loss (CA-7 forms) for the periods of September 26 to October 3, October 22 to November 2 and November 6 to December 3, 2001.

In a September 27, 2001 letter, the Office advised appellant of the factual and medical evidence required to establish his claim for a recurrence of disability.

In response to the September 27, 2001 letter, appellant submitted copies of physical therapy records and treatment records from a chiropractor, Dr. Bradley Holiday.

There was also a copy of the patient discharge instructions that the claimant had received from the Cincinnati Veterans Administration (VA) Hospital. The patient discharge instructions showed that appellant had been hospitalized from September 26 to October 3, 2001. The discharge instructions listed diagnoses of major depression, history of post-traumatic stress disorder, insomnia and chronic back pain secondary to mild T7-8 disc protrusion.

In a report dated October 11, 2001, Dr. Zisko gave a history that appellant experienced in late September a gradual recurrence of his back pain symptoms. He wrote that the claimant reported developing significant pain and diffuse globalized numbness into his lower extremities. Dr. Zisko wrote that the claimant was admitted to the psychiatric unit at the VA Hospital and that he had been off work since his hospital admission. Dr. Zisko described his physical examination findings of appellant's back, including appellant's complaints of pain and tenderness. He wrote, however, that there were no definite focal trigger points, no soft tissue swelling and no lower extremity focal motor deficits. Dr. Zisko also described findings of a negative straight leg raising test and normal sensation. He opined that appellant was experiencing an exacerbation of his underlying myofascial pain syndrome. Dr. Zisko recommended that appellant undergo an electromyogram (EMG) of the lower extremities.

In a report dated November 14, 2001, Dr. Zisko indicated that appellant's pain symptoms had improved. On examination, Dr. Zisko described chronic tightness over appellant's paraspinals, but little in the way of myofascial tenderness. He reported normal EMG findings and noted that the magnetic resonance imaging (MRI) scan findings were essentially negative for significant structural abnormalities that might account for appellant's symptoms. Dr. Zisko diagnosed appellant's condition as "recurrent symptomatic lumbar myofascial pain syndrome status post hospitalization, pain management and rehabilitation."

In a decision dated December 9, 2001, the Office denied compensation on the grounds that appellant failed to establish that he sustained a recurrence of disability on or after September 2001, causally related to his accepted work injury.

Appellant requested a hearing but also submitted additional medical reports.

In a report dated October 25, 2001, Dr. Ron M. Koppenhoefer, a Board-certified physician in physical medicine and rehabilitation, indicated that he had examined appellant at Dr. Zisko's request. Dr. Koppenhoefer noted appellant's history of back pain and leg numbness.

Physical findings were reported as normal. The physician reviewed a copy of an MRI scan dated May 29, 2001, stating that it showed evidence of degenerative changes at L5-S1, L4-5 and L3-4.¹ He wrote, “Based on my examination, I am concerned that [appellant’s] back pain could be related to the degenerative changes at the L4-5 level.” Dr. Koppenhoefer opined that appellant was currently capable of performing sedentary work and light-duty work with minimal lifting.

The record indicates that appellant underwent EMG and nerve conduction studies on October 29, 2001 that showed no evidence of a right or left lumbosacral radiculopathy, plexopathy, peripheral neuropathy or myopathy.

In light of the new medical evidence, the Office referred appellant for a second opinion evaluation with Dr. Gerald S. Steiman, a Board-certified neurologist, on November 30, 2001 to address whether appellant had any further disability or residuals from his work-related back condition. In a report dated December 6, 2001, Dr. Steiman summarized findings from the medical records and reviewed the May 29, 2001 MRI scan findings. Physical findings were reported as normal but for subjective discomfort. He opined that the MRI scan was consistent with normal degenerative changes related to the aging process. Dr. Steiman concluded that appellant had no residuals due to accepted work-related conditions of lumbosacral strain, thoracic strain and myofascial pain syndrome. He found no evidence of a continuing work-related back condition. Dr. Steiman opined that appellant was capable of returning to work without restrictions.

In the report of an examination performed on June 12, 2002, Dr. Zisko indicated that appellant had been in the VA Hospital from September 26 to October 11, 2001, for treatment in the psychiatric unit. Dr. Zisko verified that he had personally taken appellant off work from only October 11 to November 25, 2001. He recommended that the Office contact the physician who admitted appellant to the VA Hospital to further discuss the nature of his disability for that period.

A hearing was held on June 25, 2002, at which time appellant resubmitted copies of evidence of record.

In a decision dated October 7, 2002, an Office hearing representative affirmed the Office’s December 19, 2001 decision.

The Board finds that appellant failed to establish that he sustained a recurrence of disability between September 24 to December 3, 2001, causally related to his accepted work injury.

As used in the Federal Employees’ Compensation Act,² the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving

¹ The record includes copies of MRI scan reports with respect to appellant’s thoracic, cervical and lumbar spine taken during May 2001.

² 5 U.S.C. §§ 8101-8193.

at the time of injury.³ An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relationship.⁶

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁷

In this case, the Office accepted that appellant sustained a lumbar sprain and thoracic strains to any myofascial pain syndrome as a result of heavy lifting and pushing he was required to perform as a mailhandler. Appellant is seeking compensation for a recurrence of disability between September 24 to December 3, 2001. At the time he stopped work he was working in a modified job assignment. Thus appellant must show either a change in the nature and extent of his injury-related back condition or a change in the nature and extent of the light-duty requirements of his modified mailhandler job.

The Board has carefully reviewed the record and concludes that appellant has not met his burden of proof to establish a recurrence of disability. The hospital records indicate that appellant was treated for a psychiatric problem unrelated to his work injury from September 26 to October 3, 2001.⁸ From October 11 to November 14, 2001, appellant was seen by Dr. Zisko, who reported that appellant had experienced an exacerbation of his myofascial pain syndrome. The physician, however, did not report any objective findings to support a worsening of

³ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

⁴ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁵ *Jose Hernandez*, 47 ECAB 288 (1996).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ *Gus N. Rodes*, 46 ECAB 518 (1995).

⁸ The Office has not accepted in this case that appellant has an emotional condition causally related to work factors.

appellant's work-related back condition other than appellant's subjective complaints of pain. He likewise failed to explain why appellant was unable to perform his light-duty assignment.

The Board further finds that the report of Dr. Koppenhoefer does not support a conclusion that appellant sustained a recurrence of disability due to his accepted low back strain. In his October 25, 2001 report, Dr. Koppenhoefer discussed MRI scan findings indicating that appellant has lumbar degenerative disc disease. He specifically opined that appellant's increased pain symptoms could be due to the degenerative changes demonstrated on the MRI scan. Because Dr. Koppenhoefer does not attribute appellant's increased pain symptoms to his work injury and since the physician does not discuss any correlation between appellant's degenerative back condition and his accepted work-related lumbar and thoracic strains, the Board finds that appellant is unable to establish a worsening of his work injury. Moreover, Dr. Koppenhoefer specifically opined that appellant could perform light duty so there is no basis for finding that appellant was disabled for work for the periods claimed.

Finally, the Board considers the opinion of Dr. Steiman to be rationalized and credible with respect to appellant's work capacity status.⁹ Dr. Steiman examined appellant on November 30, 2001 and found that he was capable of performing light-duty work since there was no objective evidence of an ongoing lumbar or thoracic sprain. Dr. Steiman opined that appellant's work-related strains had resolved and that he was no longer under any work restrictions with regard to the work injury. He also considered the MRI scan findings to be essentially unremarkable such that appellant's symptoms were deemed to be out of proportion to his subjective complaints. Dr. Steiman's opinion is entitled to the weight of the evidence.

Appellant has presented no evidence to show a change in the nature and extent of his light-duty job requirements such that he was unable to continue working from September 24 to December 3, 2001. The medical evidence of record also fails to establish that appellant experience a worsening of his work-related back condition for the period claimed. Accordingly, the Board finds that appellant did not sustain a recurrence of disability and that the Office properly denied his claim for compensation.

⁹ To be of probative medical value a physician's opinion regarding the nature and cause of an injury with any associated disability must be based on a complete and accurate factual history and must contain adequate rationale in support of the conclusions. *See generally Mary J. Ruddy*, 49 ECAB 545 (1998).

The October 7, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member